

c. Remarks

The following rejections have been entered in the present office action:

1. Claims 1-16, and 21 are rejected under 35 US 103(a) as unpatentable over U.S. Patent 2,266,043 to Hutchins (hereinafter "Hutchins '043") in view of U.S. Patent 2,398,921 to Cook (hereinafter, "Cook '921"); and

2. Claims 17-19 are rejected under 35 USC 103(a) as unpatentable over Hutchins '043 in view of Cook '921, and further in view of German Patent No. 20213719 (hereinafter, DE '719).

3. Claim 20 is rejected under 5 USC 103(a) as unpatentable over Hutchins '043 in view of Cook '921, and further in view of DE '719.

Applicants briefly discuss the claim amendments made herein and then address each rejection in turn.

Claim Amendments

Claims 1, 16, and 20 are amended herein to include language reciting that the adjustment member is engageable with the tube portion in an axial direction, the bottom wall adjacent to the aperture being received between a bearing surface of the base and the adjustment member and the overflow being fixed to the bottom wall. The amendments find support throughout the specification and at least at Figs. 1-8 and paragraphs [0057]-[0062]. Applicant asserts no new matter is entered.

1. Rejection of Claims 1-16, and 21 under § 103(a)

The examiner has rejected claims 1-16, and 21 under 35 USC 103(a) as unpatentable over Hutchins '043 in view of Cook '921. In view of the claims as amended, applicant respectfully asserts that this rejection has been overcome.

The examiner asserts that Cook '921:

[D]iscloses two or more additional adjustment openings - at 31, the additional adjustment openings being arranged so as to be staggered in the circumferential and axial directions - see figures 1-2, and the first - at 29, and at least one of the additional openings - at 31, overlap at least partially to define different overflow levels - see figures 1-3, page 1 column 2 lines 35-55 and page 2 column 1 lines 1-11. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Hutchins and add the at least two additional openings of Cook, so as to allow for the flow of liquid through the device to be controlled. (office action at pg. 3).

The examiner asserts that Hutchins '043 discloses all other aspects of claim 1. Applicants respectfully assert that neither Hutchins '043 nor Cook '921 teaches or discloses the presently-included limitation reciting engageability of the adjustment member with the tube portion in the axial direction. This characteristic provides the presently claimed device with the functionality of continuous variability of the lowest overflow level. As far as applicants can ascertain, this functionality is not present in the cited prior art, nor is the mechanism by which it is accomplished present in the cited prior art. Because this limitation is present in all of the independent claims, the above reasoning applies to all of the dependent claims as well.

Since not all of the instant claim limitations have been accounted for in the cited art, a *prima facie* case of obviousness under § 103(a) has not been made. As such, Applicant respectfully asserts that claims 1-16, and 21 are patentable over the cited prior art and respectfully request withdrawal of the rejection.

2. Rejection of Claims 17-19 are rejected under § 103(a)

The examiner has rejected claims 17-19 under 35 USC 103(a) as unpatentable over Hutchins '043 in view of Cook '921 and further in view of DE '719. As indicated in their last response, applicant notes that the DE '719 reference has not been officially cited as prior art on PTO form 892. Applicants respectfully request that the reference be formally cited.

Applicant respectfully submits that the rationale provided above with respect to claim 16 is equally applicable to claims 17-19. DE '710, like Hutchins '043 and Cook '921, does not

teach or disclose the presently-included limitation reciting engageability of the adjustment member with the tube portion in the axial direction. Accordingly the addition of DE '719 to the combination of Hutchins '043 and Cook '921 does not cure the deficiencies of the Hutchins '043 and Cook '921 references discussed above with regard to this limitation.

Accordingly, applicant respectfully asserts that claims 17-19 are patentable over the cited prior art and respectfully request withdrawal of the rejection.

3. Rejection of Claim 20 under § 103(a)

The examiner has rejected claim 20 under 35 USC 103(a) as being unpatentable over Hutchins '043 in view of Cook '921 and further in view of DE '710. Applicant respectfully asserts that the rationale provided above with respect to previous rejections is equally applicable to this rejection. The combination of Hutchins '043 with Cook '921 and DE '719 does not teach or disclose the presently-included limitation reciting engageability of the adjustment member with the tube portion in the axial direction. The addition of DE '719 to the combination of Hutchins '043 and Cook '921 does not cure the deficiencies of the Hutchins '043 and Cook '921 references with regard to this limitation.

Accordingly, applicant respectfully asserts that claim 20 is patentable over the cited prior art and respectfully request withdrawal of the rejection.

d. Conclusion

Applicants respectfully requests reconsideration in view of this response. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P03260US0 from which the undersigned is authorized to draw.

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Respectfully submitted,

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